

BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA
DOCKET NO. 2002-57-EC - ORDER NO. 2002-348

MAY 2, 2002

IN RE: Mr. and Mrs. James Tarmann,

Complainants,

vs.

Duke Power Company, BellSouth
Telecommunications, Inc., and the Public
Service Commission Staff,

Respondents.

ORDER GRANTING
REVISED SCHEDULING

This matter comes before the Public Service Commission of South Carolina (the Commission) on Motions to Dismiss by the parties, or in the alternative, for a continuance of the hearing in this case. This Docket involves the formal complaint of Mr. and Mrs. James Tarmann (the Tarmanns or Complainants) against Duke Power Company n/k/a Duke Power, a division of Duke Energy Corporation (Duke), BellSouth Telecommunications, Inc. (BellSouth), and the Public Service Commission Staff (collectively the Respondents). Previously, by Order No. 2002-171, dated March 8, 2002, this Commission established prefilng deadlines by which the Complainants were to prefile their testimony and exhibits on or before April 17, 2002. Due to the following stated circumstances in this case, the Motions

to Dismiss are denied, the hearing is continued, and the prefile dates shall be modified to coincide with the newly scheduled hearing date.

On April 17, 2002, the due date for filing of testimony and exhibits of the Complainants, the Tarmanns filed (1) first set of interrogatories directed to BellSouth, Duke, and the Commission, (2) request to admit directed to BellSouth, Duke, and the Commission, (3) first request to produce directed to BellSouth, Duke, and the Commission, (4) responses to first set of interrogatories from BellSouth and Duke, (5) responses to request to admit from BellSouth and Duke, and (6) response to request to produce from BellSouth and Duke. According to the Tarmanns by their cover letter to this filing, addressed to the Honorable Gary E. Walsh, “we respectfully submit one original and 25 copies as requested, thereby serving you and satisfying your requirements for prefiling”.

BellSouth and Duke, on April 26, 2002, filed a Joint Motion to Dismiss the Tarmanns’ Complaint. BellSouth and Duke assert that the Tarmanns have not complied with the terms of the scheduling order previously established by the Commission in Order No. 2002-171, dated March 8, 2002 as follows: (1) the Tarmanns have not prefiled 25 copies of their direct testimony and exhibits with the Commission, (2) the Tarmanns have not served copies of their direct testimony and exhibits with BellSouth and Duke, and (3) the Tarmanns have not sought a modification of the scheduling order by timely filing a proper request with the Commission. Further BellSouth and Duke assert that the Tarmanns have violated the terms of a formal Order of the Commission, and that the Tarmanns’ actions prejudice Respondents who are still bound by the terms of the scheduling order. (The Commission Staff also filed a Motion to Dismiss based on failure of the Complainants to prefile testimony and exhibits in compliance with the

Commission's scheduling order.) BellSouth and Duke also state that their requests for a continuance in this matter, as filed by BellSouth April 26, 2002 and as filed by Duke April 22, 2002, will be mooted if the Commission grants the relief sought in the Joint Motion to Dismiss. However, if the relief sought is not granted, BellSouth and Duke renew and seek the alternative relief of an indefinite continuance as stated in Duke's request filed April 22, 2002.

Following receipt of BellSouth's and Duke's Motion to Dismiss, the Tarmanns filed a letter of response with the Commission April 30, 2002, by which the Tarmanns state that they dispute the allegation that they failed to meet the prefiling deadlines as outlined in Order No. 2002-171. According to the Tarmanns, by their submission of answers to the interrogatories by BellSouth and Duke, their direct testimony was submitted; and by the informal proceedings leading up to the formal hearing, their testimony with regard to their issues with the Commission Staff was filed. Additionally, the Tarmanns provide that exhibits were either attached to their testimony or already on file with the Commission. The Tarmanns note that they are not represented by counsel and believe that they have adhered to the Commission's procedures to the best of their ability. Also, it is the Tarmanns belief that it is not the Commission's intent to deprive average citizens of a fair hearing based on their ability or desire to obtain counsel or to represent themselves. The Tarmanns further state that dismissal of their complaint would condone substandard installation of public utilities that threaten the lives of the citizens of South Carolina. Finally, the Tarmanns state that they are ready to proceed with the hearing in this matter, that they feel the Commission's files contain ample information to reflect that the initial determination of the Commission was made in haste and

without proper investigation, and that they are and have been fully prepared to aid the Commission in making a ruling in this matter.

We have considered this matter and deny the Motions to Dismiss, although we grant the requested continuance. We understand that the significance of our scheduling order may be unclear to lay people, so we will give the Complainants another opportunity to prefile their testimony and exhibits, prior to a rescheduled hearing. Answers to questions propounded by discovery and materials already on file do not take the place of actual testimony and exhibits filed in compliance with our scheduling order. The Commission feels that no party would be prejudiced by granting of the continuance.

Accordingly, this matter is scheduled to be heard **Wednesday, July 10, 2002 at 10:30 a.m.** in the offices of the Commission. Further and pursuant to 26 S.C. Regs. 103-869(C)(Supp.2001), the Commission hereby orders that twenty-five copies of the testimony and exhibits of the Complainants shall be prefiled on or before **June 12, 2002**, and that twenty-five copies of the direct testimony and exhibits of the Respondents shall be pre-filed on or before **June 26, 2002**. (Direct testimony and exhibits may be post-marked on these dates.) Also, any rebuttal testimony and exhibits of the Complainants shall be pre-filed on or before **July 3, 2002**, and any surrebuttal testimony and exhibits of the Respondents shall be pre-filed on or before **July 8, 2002**. (Rebuttal testimony and exhibits and surrebuttal testimony and exhibits must be in the offices of the Commission and in the hands of the parties on these dates.)

It should be noted that acceptance into the record of surrebuttal testimony and exhibits is subject to the discretion of the Commission. In addition, parties shall serve their pre-filed

testimony and exhibits on all other parties of record as required by the Commission's Rules and Regulations. All parties are reminded that all witnesses must be present during any hearing in this matter at the call of the Chairman, or the Commission may decline to allow the witnesses' testimony to be read into the record of the proceeding, and/or may decline to allow the witnesses' exhibits to be entered into the evidence of the case.

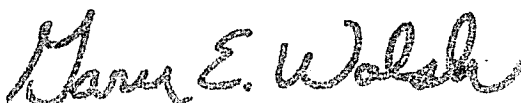
Please take notice that any party requesting modification of this schedule must file a request for such modification with the Commission.

This Order shall remain in full force and effect until further Order of the Commission.

BY ORDER OF THE COMMISSION:


Chairman

ATTEST:


Executive Director

(SEAL)